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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012-0076; Sequence 49]

[OMB Control No. 9000-0102]

Information Collection; Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a previously approved information collection requirement concerning prompt payment.

DATES: Submit comments on or before **[Insert date 60 days after publication in the Federal Register.]**

ADDRESSES: Submit comments identified by **Information Collection 9000-0102, Prompt Payment**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0102, Prompt Payment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0102, Prompt Payment" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417. ATTN: Hada Flowers/IC 9000-0102, Prompt Payment.

Instructions: Please submit comments only and cite Information Collection 9000-0102, Prompt Payment, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA

(202) 501-3221 or email Edward.chambers@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/ supplier. Part 32 of the FAR and the clause at 52.232-27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts -

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously

identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontracts and to require each of its subcontracts to include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100-496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts

withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting & Recordkeeping Burden

Data from the Federal Procurement Data System (FPDS) regarding fixed price construction contracts for Fiscal Year (FY) 2011 revealed that the number of affected contracts and, therefore, respondents has been reduced from the previously approved information collection. Time required to assemble and prepare notification or certification regarding withhold is estimated at .11 hours per notice. This estimate is based on the assumption that some construction contractors will be required to notify the Government of withholding and others will have to provide their payment certification, and that 2,679 contractors under a total of 4,450 contracts will have to notify the Government 11 times per year. This estimate assumes automation of contractor records. The recordkeeping burden

is based on the revised number of contracts for FY11 and the estimated hours from the previously approved collection.

Annual Reporting Burden

Respondents: 2,679.

Responses Per Respondent: 18.27.

Total Responses: 48,950.

Hours Per Response: .11.

Total Burden Hours: 5,384.

Annual Recordkeeping Burden

Recordkeepers: 4,450

Hours per Recordkeeper: 18

Total recordkeeping Burden Hours: 80,100

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 9000-0102, Prompt Payment, in all correspondence.

Dated: January 18. 2013

William Clark,
Acting Director,
Federal Acquisition Policy Division,
Office of Governmentwide Acquisition Policy,
Office of Governmentwide Policy.

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